The right to decide whether certain transportation service is required by public convenience and necessity is for the Commission to determine. It is well settled law that the orders of the Interstate Commerce Commission are final, unless beyond the power that the Commission can constitutionally exercise; beyond its statutory power; or unsupported by substantial evidence. The decision of the District Court of the United States for the District of Maryland herein in declaring the Order of said Commission invalid meets none of these qualifications.

It is further submitted that the plaintiffs themselves have no standing to bring this suit. The Interstate Common Carrier Council of Maryland, Inc., is a membership association engaging in no business and operating no motor carrier lines. It is an association of motor carriers banded together for the purpose of protesting actions of the Interstate Commerce Commission, which they believe to adversely affect their interests and this in turn resolves itself usually to an attempt to keep down competition. The Baltimore Transfer Company and the Davidson Transfer and Storage Company did not personally enter an appearance before the Interstate Commerce Commission when this application was considered. They were represented by the Interstate Common Carrier Council of Maryland, Inc. Neither were these two carriers parties to the original bill of complaint. Your petitioner believes that these parties are not substantially or directly affected by the Order of the Commission and have failed to show or allege that the Commission's Order violates any of their specific legal rights. It follows that the institution of this suit was in itself invalid and should have been dismissed.

During the pendency of this suit the Interstate Commerce Commission issued its final Certificate of Authority embracing the alternate route from Baltimore to Philadelphia, which was the subject matter of this proceeding. The plaintiffs did not post supersedeas bond, nor ask for an order

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restraining the Commission from issuing the Certificate while suit was pending. With full knowledge that said suit was pending, the Commission issued its Certificate of Authority, the final evidence of your petitioner's right to perform the service therein described.

Title 49 U. S. C. A., Section 312a provides that Certificates shall be effective from the date specified therein and shall remain in effect until suspended or terminated as herein provided. Authority for revocation of a Certificate is provided in the event of lawful failure to comply with the provisions of this chapter of the Motor Carrier Act, or with any lawful order, rule or regulation of the Commission, or the terms of the Certificate. This is the only provision in the Interstate Commerce Act for the revocation of a Certificate and there are no facts alleged in this complaint justifying revocation based upon this section of the statute.

It is respectfully submitted that a sound public policy for the performance of public transportation requires that when a final Certificate has once been issued to a carrier, the carrier shall be entitled to rely upon the final nature of that Certificate and that the same shall not be subject to capricious or arbitrary cancellation, except as provided by the plain intent of Section 312a, *supra*. Your petitioner believes that insamuch as there is no cause of action for the cancellation of this Certificate under Section 312a, that neither the United States District Court for the District of Maryland, nor the Interstate Commerce Commission has a right to terminate the same by reason of the complainants' action herein.

It is respectfully submitted that the foregoing plainly shows that the plaintiffs' suit herein is invalid and that the plaintiffs have no standing for the purpose of instituting this action and further that the decision of the Interstate Commerce Commission in this respect is final and binding and is not subject to review by the District Court of the United States for the District of Maryland herein, and that

the same was based upon sound evidence of public convenience and necessity as supported by the record, and further that inasmuch as said Order of the Commission has ripened into the issuance of a Certificate of Authority, the same is not subject to revocation on the basis of the complaint field herein. The action of the District Court of the United States for the District of Maryland in finding to the contrary usurps the power and authority of the Interstate Commerce Commission, and its enforcement will impose great damage upon your Petitioner and will seriously affect public interest, public welfare, convenience and necessity, and is in direct conflict with the provisions of the law pertaining thereto. For these reasons, it is submitted that these questions affect interstate commerce and are substantial, and for these reasons this jurisdictional statement is submitted.

The following cases are cited in support of the Petitioner's contention plaintiffs have no standing to bring this suit:

Merchants Truckman's Bureau v. *U. S.*, 16 F. Supp. 998, 999;

Sprunt & Son v. *U. S.*, 281 U. S. 249, 254-55 (1930);

Moffat Tunnel League v. *U. S.*, 289 U. S. 113, 119-20 (1933);

Penna. R. R. Co. v. *U. S.*, 40 F. (2) 921, 925 (1930);

Indian Valley R. R. v. *U. S., et al.*, 52 F. (2) 485, 487 (1931);

Pittsburgh and W. Va. Rwy. Co. v. *U. S.*, 281 U. S. 479, 486-7 (1930).

The question as to whether certain transportation is required by public convenience and necessity is for the Commission to determine. See the following cases:

Interstate Commerce Commission v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547 (1912);

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Mississippi Valley Barge Line Co. v. *U. S.*, 292 U. S. 282, 286-7;
Va. Rwy. Co. v. *U. S.*, 272 U. S. 658, 663-666;
Western Paper Makers Chemical Co. v. *U. S.*, 271 U. S. 268, 271 (1926);
U. S. v. *Detroit & Cleveland Navigation Co,.* 326 U. S. 236, 240-41 (1945);
Interstate Commerce Commission v. *Parker*, 326 U. S. 60, 65 (1945);
Chesapeake & Ohio Rwy. Co. v. *U. S.*, 283 U. S. 35, 42 (1931);
U. S. v. *Pierce Auto Freight Lines, Inc.*, 327 U. S. 515, 535-6 (1946);

and other cases.

The Commission and courts are without power to revoke this Certificate. See the following cases:

Smith Brothers Revocation Case, 33 MCC 465;
U. S. of America and Interstate Commerce Commission v. *Seatrain Lines, Inc.*, 6 F. C. C. 80367;
Quaker City Bus Co., Purchase—Blackhawk Lines Inc., 34 MCC 603;
Manhattan Coach Lines v. *Adirondack Transit Lines*, 42 MCC 123;
Boulevard Transit Lines v. *U. S.*, 77 F. Supp. 594, 595.

Respectfully submitted,

HALL HAMMOND,
Attorney for Schreiber Trucking Co., Inc., Intervening Party Defendant;

CLAYTON W. DANEKER,
Of Counsel;

LOUIS E. SMITH,
Of Counsel.

APPENDIX A

DECREE OF COURT

Filed 13th May, 1949

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

Civil Action No. 3959

INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC., THE BALTIMORE TRANSFER COMPANY, and DAVIDSON TRANSFER AND STORAGE COMPANY, *Plaintiffs*,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES OF AMERICA, *Defendants*

Decree

The above cause came on regularly for trial on the 16th day of March, 1949, before a statutory court composed of three judges and said court having examined the pleadings and the reports of the Interstate Commerce Commission which were submitted, and said court having heard the arguments of respective parties and having fully considered such pleadings, records and arguments, and having herein filed its written opinion and findings of fact and conclusions of law:

NOW THEREFORE it is hereby decreed as follows:

So much of the Order of the Interstate Commerce Commission as is under consideration in the within proceeding, viz., the grant of authority to Samuel Schreiber and Mrs. Harry Schreiber, d/b/a Schreiber Trucking Company, to operate over an alternate route from Baltimore, Md., to Philadelphia, Pa., over U. S. Highway No. 1, for operating convenience only, is invalid and is hereby set aside, and the case be and the same is hereby remanded to the Interstate Commerce Commis-

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sion with instructions that the Commission shall exclude from any authority heretofore granted to Samuel Schreiber and Mrs. Harry Schreiber, d/b/a Schreiber Trucking Company, the right to operate over the said alternate route and shall take such further action, if any, as to it seems proper and in accord with the written opinion filed herein and the Clerk is hereby directed to forward a copy of the decree to the Attorney General of the United States and to the Interstate Commerce Commission.

MORRIS A. SOPER,
United States Circuit Judge;

WILLIAM C. COLEMAN,
United States District Judge;

W. CALVIN CHESNUT,
United States District Judge.

V-13-'49.

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